

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

In The Matter of M.L.P.,	)	
Petitioner	)	
and	)	<b>CAUSE NO. 021504-18</b>
The Indiana High School Athletic Assoc.,	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	
I.C. 20-5-63 <i>et seq.</i>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**Procedural History**

M.L.P., the Petitioner herein, is a 16-year-old sophomore presently attending Lutheran High School of Indianapolis (hereafter, “Lutheran”). She previously attended Southport High School in the Metropolitan School District of Perry Township (hereafter, “Southport”) for her ninth grade year and the first semester of her tenth grade year. She participated in freshman volleyball and softball during her ninth grade year, and was a member of the junior varsity volleyball team at Southport during the first semester of her sophomore year.

Petitioner transferred to Lutheran at the semester break, principally for religious reasons and academic concerns. Both Southport and Lutheran executed the IHSAA Athletic Transfer Report. Southport completed its portion of the Report on February 13, 2002, while Lutheran completed the Report on February 22, 2002. Both schools indicated Petitioner did not transfer for athletic reasons or because of any undue influence. However, both schools indicated that Petitioner should have “limited eligibility.”<sup>1</sup>

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<sup>1</sup>The Indiana High School Athletic Association (IHSAA) has a series of by-laws through which it sanctions interscholastic competition among its member schools. Some by-laws are gender specific (“B” for “Boys”; “G” for “Girls”), but there are a number of by-laws that are “Common” or applicable to both genders. These rules begin with a “C.” One of these by-laws addresses “limited eligibility,” which allows a transfer student to be eligible to participate immediately in all interscholastic competition, except that such participating cannot be at the varsity level for 365 days from the date of last participation at a previous school. **Rule C-19-6.2** provides that “[a] student who transfers without a corresponding change of residence to a new district or territory by the student’s parent(s)/guardian(s) may be declared to have limited

The Respondent, based on the representations contained in the Report, found the Petitioner to have “limited eligibility,” which would allow her to participate at the junior varsity level but not the varsity level until 365 days had elapsed since she last participated in volleyball for Southport. The Petitioner and Lutheran appealed on March 1, 2002, to the IHSAA’s Review Committee under **Rule C-17-4**. The Review Committee conducted its proceedings on March 22, 2002, and issued its written decision on March 28, 2002, upholding the determination that Petitioner would have “limited eligibility.”

### **APPEAL TO THE CASE REVIEW PANEL**

The Petitioner, on April 15, 2002, appealed to the Case Review Panel (CRP) the adverse decision of the IHSAA Review Committee. All parties were notified of their hearing rights on that date. The Petitioner’s parent, on April 18, 2002, signed and returned a disclosure form, making the hearing open to the public. A hearing date was May 10, 2002. The parties were so notified. A notice of the CRP’s hearing was posted, as required of public agencies by Indiana’s Open Door Law, I.C. 5-14-1.5 *et seq.* CRP members were provided with copies of the record as established before the IHSAA. The Petitioner did not appear in person but was represented by her father. Respondent appeared by counsel and its Commissioner.

The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA, when a parent or guardian so requests. Its decisions are to be student-specific, applying only to the case before the CRP. The CRP’s decision does not affect any By-Law of the IHSAA.<sup>2</sup>

The parties appeared on May 10, 2002, and presented evidence, testimony, and argument in support of their respective decisions. The Petitioner introduced one additional documents: P-1 (most recent report card from Lutheran). Respondent did not object to the introduction of this document into the record.

Based upon the record as a whole, including testimony and documentation, the following Findings of Fact are determined.

### **FINDINGS OF FACT**

1. The Petitioner is a 16-year-old sophomore at Lutheran (d/o/b January 21, 1986). She participated on the freshman volleyball and softball teams during her ninth grade year at Southport, and was a member of the Southport junior varsity volleyball team during the

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eligibility. This is the rule at issue in this matter.

<sup>2</sup>CRP Members Khadijah A. Muhammad, Gerald McLeish, and Mark Mason did not participate in this hearing.

first semester of the 2001-2002 school year. She enrolled in Lutheran on or about January 11, 2002, and now attends Lutheran. Petitioner lives with her father. There was not a corresponding change of residence when she transferred schools. Lutheran and Southport are about the same distance from Petitioner's residence. Her reasons for transferring are related to religion and academics. Lutheran has small class sizes. Although she was academically capable at Southport, she has improved her overall grade point average at Lutheran. She would have remained eligible for athletic competition had she remained at Southport.

2. Southport and Lutheran are members of the IHSAA. Both completed the Athletic Transfer Report, with both indicating that Petitioner should have "limited eligibility," which would prevent Petitioner from participating in varsity competition for 365 days from her last participation as a member of the Southport junior varsity volleyball team. She will have full eligibility thereafter.<sup>3</sup> Both schools agreed the transfer was not primarily for athletic reasons and was not due to any undue influence. Based on the representations in the Athletic Transfer Report, the IHSAA determined Petitioner would have "limited eligibility."
3. During the proceedings afforded by the IHSAA, Lutheran clarified its position through its Executive Director. Lutheran supported full eligibility for the Petitioner. However, Southport has not testified, either during the IHSAA proceedings or before the CRP. As a result, there is no elaboration upon Southport's representation that Petitioner should have "limited eligibility" rather than full eligibility.<sup>4</sup>
4. Although initially Petitioner sought an exception to **Rule C-19** based upon the "Hardship Rule," this position was abandoned at the CRP hearing.<sup>5</sup> Petitioner acknowledges that her situation does not meet the "Hardship Rule" criteria.

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<sup>3</sup>Testimony indicated that her last date of participation was on or about October 18, 2001. She was not a member of the varsity roster submitted for tournament play.

<sup>4</sup>There was testimony that Petitioner was suspended from competition by the volleyball coach for internal discipline reasons, but this was not mentioned by Southport when it completed the Athletic Transfer Report.

<sup>5</sup>**Rule C-17-8** is the IHSAA's "Hardship Rule." Generally, the "Hardship Rule" allows the IHSAA "to set aside the effect of any Rule [with some exceptions] when the affected party establishes, to the reasonable satisfaction of [the IHSAA], all of the following conditions are met:

- a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
- b. The spirit of the Rule has not been violated; and
- c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule." **Rule C-17-8.1.**

5. Petitioner asserts that **Rule C-17-8.5** should apply in this instance. This rule allows the IHSAA to grant a student “full eligibility” under **Rule C-19** if (a) the student continues to reside with her father; (b) she establishes that the transfer is in her best interest and there are no athletic related motives surrounding the transfer; and (c) the principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the student and there is no athletic related motive surrounding the transfer. Southport has not provided the requisite written statement.

### CONCLUSIONS OF LAW

1. Although the IHSAA is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition is “state action” and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-5-63 *et seq.* The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the Student. The parents timely sought review. The Case Review Panel has jurisdiction to review and determine this matter.
2. Any Finding of Fact that could be considered a Conclusion of Law shall be considered as same. Any Conclusion of Law that could be considered a Finding of Fact shall be considered as such.
3. Petitioner transferred to Lutheran from Southport at the semester break of the 2001-2002 school year, or on or about January 11, 2002. There was no corresponding change of residence. The Athletic Transfer Report, when initially completed by both schools, indicated Petitioner should have “limited eligibility.” Although Lutheran later indicated that Petitioner should have “full eligibility,” Petitioner has not presented any evidence or testimony regarding the decision made by Southport, which has not been amended. Accordingly, **Rule C-17-8.5** is not applicable to this situation.
4. Petitioner’s reasons for transferring were related principally to religious and academic concerns. Her transfer was not primarily for athletic reasons, and there is no evidence of undue influence. Nevertheless, Petitioner acknowledges that she does not meet the criteria for application of the “Hardship Rule” such that the application of **Rule C-19-6.2** should be relaxed.

### ORDERS

1. The Case Review Panel, based upon the foregoing Findings of Fact and Conclusions of Law, hereby uphold, pursuant to I.C. 20-5-63-7(c)(3)(A), the determination of the Indiana High School Athletic Association regarding M.L.P. The vote to do so was 6-0.

DATE: May 13, 2002

/s/ John L. Earnest, Chair

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Indiana Case Review Panel

### APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.